now worthless, and they are bound to pay full rent for them. The court hold, however, that the subject matter of the lease was in reality only a "landing," and now that no landing can fairly be said to exist, this subject matter is wholly gone. This view will probably commend itself to all as highly sensible, though a point is left open to speculation as to the right the lessees would have had to use a practicable landing at a new place, supposing the course of the flood had left such a landing. Even if a landing could still be considered as existing after the catastrophe, the court further hold that the acts done by the lessor, or by her authority, give the lessees good cause to consider themselves evicted from the property leased, and therefore released from the liability for rent. This is an extension of the application of the term "eviction" to a case where the lessee is deprived of the enjoyment, not of land leased, but of an incorporeal right leased. Just such a case has perhaps never before arisen, on account of the rarity of leases of incorporeal rights; but there seems to be no reason why the lessor's conduct here should not be described and treated as an eviction.

ADVERSE POSSESSION BY A RELATIVE. — As a practical matter, more is required to warrant finding possession adverse when the possessor and owner are relatives than when they are mere strangers. But the statement of the Supreme Court of Minnesota in *O'Boyle* v. *McHugh*, 69 N. W. Rep. 37, 38, that the relation of parent and child "radically modifies the general rules of law as to what constitutes adverse possession between strangers," is unfounded in reason, and is not supported by the authorities. The only legitimate effect of the relationship is to give rise to an inference that the possession was permissive. To say that there is a presumption of this is not so objectionable, though it adds little, since the particular facts of the actual relationship must determine the force of the inference in each case. Frequently, the mere fact of family connection must be entirely disregarded because of the actual relations between the parties. There is the further difficulty that no indication is given as to the degree of relationship necessary to bring the case within the rule laid down. It seems as though the court considers that there is an analogy to adverse possession by a tenant in common, or by a person lawfully in possession who secretly determines to hold as owner.

This question is well dealt with in *Allen* v. *Allen*, 58 Wis. 202, 210, where it is said that the relationship is "another *fact* in the case which makes strongly against the claim" of an adverse and hostile possession. "In such case mere possession . . . would not have *the same force in proving* an adverse entry and holding as it would in the case of mere strangers." And so in *Silva v. Wimpenney*, 136 Mass. 253, a case where the trial court ruled that title by adverse possession had not been gained, on appeal Mr. Justice Holmes took up the facts of the case and weighed them in the light of the relationship.

MAY A SURGEON DISREGARD THE INSTRUCTIONS OF HIS PATIENT? — Interesting questions as to the extent of a surgeon's authority to follow his best judgment in the course of an operation are suggested by the recent English case of *Beatty* v. *Cullingworth*. (Queen's Bench Division,

before Mr. Justice Hawkins and a special jury. Reported in the London Times, Aug. 11, Nov. 18, 19, 1896.) The material facts of the case were as follows. The defendant performed the operation of double ovariotomy on the plaintiff, a single woman at that time engaged to be married. Just before the operation Miss Beatty told the defendant that if both ovaries were found to be diseased he must remove neither. He replied, "You must leave that to me." The plaintiff denied hearing this remark. When she learned that Dr. Cullingworth had taken out both ovaries, she broke her engagement, and later brought the suit in question for malpractice and assault. The jury promptly found a verdict for the defendant. As a point of law, the question seems to have been inadequately considered, the charge of Mr. Justice Hawkins being little more than a direction to the jury that there was tacit consent to the operation.

It is difficult to sustain the verdict on the grounds taken. The facts, involving a direct prohibition, would seem to exclude the possibility of implying consent. But there is the better justification of public policy. When such connection between patient and surgeon is established that it is proper for the latter to act, he may lawfully, in the absence of consent, perform an operation which the necessity of the occasion seems to his careful judgment to require. Stephen, Digest of Criminal Law, 5th ed., p. 164, Art. 226. It is true that this does not cover a case where there is express prohibition by one rationally capable of deciding and having knowledge of the circumstances. But in this case, judging from the evident reason or cause of the instructions, the plaintiff did not have a sufficient knowledge of the facts. For the advanced stage of disease which made removal of the ovary appear necessary to a competent surgeon itself rendered the organ practically useless, as well as dangerous. Such, at least, appears to be the general medical opinion. After all is said, however, undoubtedly the defendant's wisest course would have been to refuse to operate in such a case, when hampered by hard and fast limitations. Certainly this is the course that would be adopted under similar conditions by the better class of surgeons in this country.

MORE UNFAIR COMPETITION CASES. — Never were unsuccessful traders more prone than at present to seek an easy path to prosperity by copying the business name of a more fortunate rival, or by "dressing up" their wares to look like his, in the hope of enticing away a part of his trade. The courts continue to be flooded with these so called "unfair competition" cases. Three decisions, illustrating different aspects of the subject, have been reported within a month. In *Buck's Stove & Range Co.* v. *Kiechle*, 76 Fed. Rep. 758, the defendant, it appeared, was making stoves with white enamel lining on the inside of the doors, in imitation of those long manufactured and sold by the plaintiff, with the fraudulent purpose and result of palming them off upon the trade and the public as the manufacture of the latter. He was promptly enjoined from continuing in that line of business. In *Fairbank Co.* v. *Bell Mfg. Co.*, reported in the New York Law Journal for December 14, the defendant discovered that the plaintiff's soap powder was finding an extensive market, and so determined to put up his own powder in a package of a very similar sort to that employed by plaintiff. He carried out his plan for some time with considerable success, but he too has now been enjoined. In *Mossler* v. *Jacobs*, reported in 7 Chicago Law Journal,